

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RED EARTH LLC d/b/a
SENECA SMOKESHOP and
AARON J. PIERCE,

Plaintiffs,

TEMPORARY RESTRAINING ORDER

v.

10-CV-530A

UNITED STATES OF AMERICA and
ERIC H. HOLDER, JR., in his Official
Capacity as Attorney General of the
United States,

Defendant.

SENECA FREE TRADE ASSOCIATION,

Plaintiff,

v.

10-CV-550A

ERIC H. HOLDER, JR., in his Official
Capacity as Attorney General of the
United States;
UNITED STATES DEPARTMENT OF JUSTICE;
JOHN E. POTTER, in his official capacity as
Postmaster General and Chief Executive Officer
of the United States Postal Service; and
UNITED STATES POSTAL SERVICE;

Defendants.

Plaintiffs have made application pursuant to Fed. R. Civ. P. 65 for a temporary

restraining order and preliminary injunction against the defendants, enjoining and restraining defendants from enforcing the Prevent All Cigarette Trafficking Act ("PACT Act") of 2009. Pub. L. No. 111-154, 124 Stat. 1087, during the pendency of this action.

Upon plaintiffs' motions for a temporary restraining order, and upon the Complaints filed in these actions, the supporting affidavits and Memorandum of Law, and upon hearing argument from counsel on July 2, 2010, the Court finds: (1) that plaintiffs have demonstrated that they will suffer irreparable injury absent injunctive relief; (2) that, at this juncture, plaintiffs have demonstrated a likelihood of success on the merits of their claim that the PACT Act violates various provisions of the United States Constitution, including the Commerce Clause, the Tenth Amendment, the Due Process Clause, the Equal Protection Clause and principles of federalism and have demonstrated that the balance of hardships tips decidedly in their favor; and (3) that a temporary restraining order restraining the enforcement of the PACT Act pending a further hearing on these complex constitutional issues is in the public interest because the public interest favors restraining enforcement of statutes that appear to violate provisions of the Constitution. Accordingly, it hereby is

ORDERED that pending the earlier of a determination upon plaintiffs' motions for a preliminary injunction, or the expiration of 14 days from the date of this Order (unless otherwise extended an additional 14 days under Fed. R. Civ. P. 65), defendants are hereby restrained from enforcing the PACT Act as against plaintiffs Red Earth LLC d/b/a/ Seneca Smokeshop and Aaron J. Pierce, and members of plaintiff Seneca Free Trade Association; and further

ORDERED that with respect to enforcement of § 3 of the PACT Act (declaring

cigarettes and smokeless tobacco to be nonmailable matter), defendant United States Postal Service is enjoined from rejecting packages presented by plaintiffs for mailing on the basis that such packages violate § 3 of the PACT Act, *provided however* that: (1) the package or packages to be mailed contain the name and return address of the sender; (2) that the sender is a member of plaintiff Seneca Free Trade Association ("SFTA") and is identified as such in a list to be provided by the SFTA to defendants; and (3) that the package or packages are mailed from one of three mailing locations in the Western District of New York designated by the United States Postal Service to accept delivery of such packages; and further

ORDERED that any response or reply papers in support or against the pending motion for a preliminary injunction shall be filed by **July 6, 2010, at noon**; and further.

ORDERED that the parties shall appear for a hearing on the preliminary injunction in this Court on **July 7, 2010, at 10:00 a.m.**; and further

ORDERED that this Temporary Restraining Order supersedes the Court's Temporary Restraining Order issued on June 28, 2010.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: July 2, 2010